IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.10253 and 16295 of 2004

WRIT PETITION No.10253 of 2004

Between:

1 Valmiki Youth Welfare Association, rep. by B. Raju Singh,

President, 8-3-696, Imamguda, Yellareddyguda,

Hyderabad-500 073.
2 Shalivahana Nagar Colony Welfare Association,

rep. by its President Ch. Siva Rao,
8-3-976/18, Shalivahana Nagar, Hyderabad-500 073.
3 L.I.C. Colony Welfare Association, rep. by its Secretary,

D.V. Ramana Das, L.I.C. Colony,
Hyderabad-500 073.
4 Navodaya Colony Residents Welfare Association,

rep. by its Secretary, Mr. L. Sanjay,

Navodaya Colony, Srinagar Colony, Hyderabad - 500 073.

..... PETITIONERS

AND

1 Commissioner, Municipal Corporation of Hyderabad,

MCH, Building, Hyderabad.
2 Government of A.P., rep. by its Secretary,

Municipal Administration and Urban Development Dept.,
Secretariat, Hyderabad.
3 District Collector, Hyderabad Urban District, Nampally

Station Road, Hyderabad.
4 Mandal Revenaue Officer, Khairatabad Mandal,

Prem Nagar, Khairatabad, Hyderabad.
5 Station House Officer, Panjagutta Police Station,

Panjagutta, Hyderabad.
6 Pastor M. Subbudi Rao, Zion Church, H.No.8-3-674/F4,

Sikhara Apartments, Jaiprakash Nagar Yellareddyguda,

Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Art. 226 of the constitution of India and declare the G.O.Ms.No.331 M.A., dt. 19th July, 2001 of the 2nd respondent and the consequential proceedings of the 1st respondent made in Proc.No.1141/ACP/C5/99-2001, DT. 21.9.2001 as *ultra virus* to the Constitution and the provisions of Sec. 8(3) of the Hyderabad Municipal Corporation Act and arbitrary and illegal.

Counsel for the Petitioner: Sri V.T.M.PRASAD

Counsel for the Respondent No.: Smt. G.Jyothi Kiran

Sri P.V.Ramana

Sri G.Satish Babu

GP FOR MUNCIPAL ADMN. & URBAN DEV.

WRIT PETITION No.16295 of 2004

Between:

1 G. Sathyavani, W/o G. Chandrasekhar Rao,
R/o 8-3-315/A, Maruthinagar, Yousufguda, Hyderabad.
2 E. Yella Rao, S/o E. Lakshmaiah,
R/o H.No.8-3-677/11, Srikrishna Devaraya Nagar, Hyderabad.

..... PETITIONERS

AND

1 Government of Andhra Pradesh, Rep. by its Secretary,
Municipal Administration and Urban Development

Department, Secretariat, Hyderabad.
2 Commissioner, Municipal Corporation of Hyderabad,

M.C.H. Building, Hyderabad.
3 District Collector, Hyderabad Urban District, Nampally Station Road,
Hyderabad.
4 Mandal Revenue Officer, Khairatabad Mandal,

Prem Nagar, Khairatabad, Hyderabad.
5 Zion Church, H.No. 8-3-674/F4, Sikhara Apartments,

Jaiprakash Nagar, Yellareddyguda, Hyderabad,
Rep. by Pastor M. Subbudi Rao.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, or order or direction more particularly in the nature of Writ of Mandamus declaring the action of R1 in allotting open space/park in the residential area for religious denominations as unconstitutional and consequently set aside the G.O.Ms.No. 331MA dated 19-7-91 issued by R1 and all the consequential proceedings as violative of Sec.148 (3) of Hyderabad Municipal Corporation Act and direct respondents to restore the park for usage by the local residents.

Counsel for the Petitioner: Sri K.S.MURTHY

Counsel for the Respondents: GP FOR MUNCIPAL ADMN. & URBAN DEV.

Smt. G.Jyothi Kiran

Sri P.Venugopal

The Court made the following :

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COMMON JUDGMENT : (Per **THE HON'BLE THE CHIEF JUSTICE)**

The bone of contention in these two writ petitions is a piece of land ad measuring 100 square yards located by the side of site where it is alleged that earlier religious structure was located.

On 7-12-2000 G.O.Ms.No.568,Municipal Administration, was issued by Government of Andhra Pradesh with reference to D.O. letter dated 25-5-2000 of the Commissioner and Special Officer, Municipal Corporation of Hyderabad, who had reported that Zion Church in Yellareddyguda, Hyderabad was demolished on 4-5-2000. The Church was an unauthorized construction on Shalivahana Nagar to Yousufguda Road and the said structure was demolished on many occasions in the

past. The Commissioner, however, had proposed to allocate 100 square yards of open space on lease located by the side of the site where the demolished structure was located. As per the Order of the Government, the matter was examined and it was decided to allot 100 sq.yards of land adjacent to Ranga Reddy District Employment Office shops on Yousufguda to Shalivahana Nagar Road to Zion Church on free of cost in purported exercise of powers conferred under sub-section (3) of Section 148 of the Municipal Corporation of Hyderabad Act,1955. W.P.No.20 of 2001 was filed by M/s. Raghava Enclave Residents Welfare Association and on 15-2-2001 the writ petition was disposed of quashing and setting aside the said G.O.Ms.No.568 MA, dated 7-12-2000 as being contrary to law. It was held in the said order that neither the Government nor the Municipal Corporation being public trustees of parks, play grounds etc., meant for public use in general can direct the use of such land for any other purpose. Accordingly, while setting aside the said Order, it was directed that Commissioner's proposal for allotting some other land in favour of Zion Church be considered separately by passing appropriate orders. On 19-7-2001 by G.O.Ms.No.331,MA, again the Government appears to have re-examined the matter and by cancelling the earlier order directed the Commissioner and Special Officer, Municipal Corporation of Hyderabad to allot an extent of 100 sq.yards in layout open space behind the then site adjacent to Andhra Pradesh State Electricity Board Old Office Building, Yellareddyguda to Zion Church for the purpose of religious activities on free of cost in exercise of powers under sub-section (3) of Section 148 of the Municipal Corporation of Hyderabad Act,1955.

Needless to add that the 100 sq.yards of land, which is subject matter of G.O.Ms.No.331,MA, dated 19-7-2001 is a part of approved layout of Navodaya Cooperative House Building Society Limited in Survey Nos.97/1, 100 and 101 of Yellareddyguda, Hyderabad and it is a part of the said layout being shown in the layout as open space and as per the Municipal Corporation of Hyderabad (Layout) Rules,1965 it vests in the Corporation being open space in the layout. Under Rule 10-A of the said Rules, Corporation is bound to maintain such open spaces for the purpose of which it has been earmarked. Reading of the entire Layout Rules would suggest that there cannot be any deviation from the layout plan as approved. Rule 10-A of the Rules itself would suggest that once open spaces, roads, parks, playgrounds etc., earmarked in accordance with the rules vest in the Corporation, the Corporation is bound to maintain such open spaces for the purpose for which they were earmarked. Once by judicial order dated 15-2-2001 passed in W.P.No.20

of 2001 filed by M/s.Raghava Enclave Residents Welfare Association had set aside the action of Municipal Corporation of Hyderabad and the State Government in directing allotment of 100 sq.yards of land in favour of Zion Church on the ground that such action on the part of Municipal Corporation and State Government was contrary to law, issuance of fresh order by G.O.Ms.No.331,MA, dated 19-7-2001 is nothing but overreaching the order of the Court. Not only the Order dated 19-7-2001 allotting 100 sq.yards of land to Zion Church is in contravention of the judicial order, but is also in contravention of G.O.Ms.No.419 MA, dated 13-8-1996 and G.O.Ms.No.72 MA, dated 20-2-2002. Under both these G.O.Ms.No.419 MA, dated 13-8-1996 and G.O.Ms.No.72 MA, dated 20-2-2002, it is not permissible to alienate any land, which vests in the Municipal Corporation for any private purpose including religious, educational etc.

Any land, either open space or otherwise, vests in the Municipal Corporation cannot be utilized by the Corporation at its whims and fancies, especially when the residents of that area oppose the use thereof for the purpose other than it is earmarked. So long as layout plan is not amended, the action of respondents in making allotment in favour of Zion Church has to be treated as null and void; thereby conferring no right on the Zion Church.

Accordingly, we allow the writ petitions, quash and set aside the Order in G.O.Ms.NO.331,MA, dated 19-7-2001 and all consequential actions taken thereunder including the transfer effected by Proceedings dated 21-9-2001 of the Commissioner, Municipal Corporation of Hyderabad. Zion Church is thus prohibited from continuing in occupation of the land and making use of the land for any purpose whatsoever.

(DEVINDER GUPTA, CJ)

16th November,2004

(C.V. RAMULU,J)

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Commissioner, Municipal Corporation of Hyderabad,

MCH, Building, Hyderabad.
2 The Secretary, Government of A.P.,

Municipal Administration and Urban Development Dept.,
Secretariat, Hyderabad.
3 District Collector, Hyderabad Urban District, Nampally

Station Road, Hyderabad.
4 Mandal Revenaue Officer, Khairatabad Mandal,

Prem Nagar, Khairatabad, Hyderabad.
5 Station House Officer, Panjagutta Police Station,

Panjagutta, Hyderabad.
6. 2CCs to G.P. for Municipal Administration & Urban

Development Department, High Court Buildings, Hyderabad (OUT)

7 Pastor M. Subbudi Rao, Zion Church, H.No. 8-3-674/F4,

Sikhara Apartments, Jaiprakash Nagar, Yellareddyguda, Hyderabad,
8. 2CD copies